

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1119**

Law Enforcement Labor Services, Inc., Brooklyn Center, Minnesota,
Relator,

vs.

City of St. Cloud, Minnesota,
Respondent,

International Association of Machinists & Aerospace Workers, Vadnais Heights,
Minnesota,
Respondent,

Bureau of Mediation Services,
Respondent.

**Filed April 3, 2023
Reversed and remanded
Slieter, Judge**

Bureau of Mediation Services
File No. 21PRE0388

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Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Relator Law Enforcement Labor Services Inc. (LELS) appeals from an order issued by respondent Bureau of Mediation Services (BMS) that withdrew BMS' earlier certification of LELS as the exclusive representative of all supervisory employees employed in the St. Cloud police department support division (the support division). Because BMS failed to consider whether the employees in the support division were supervisory employees as defined by statute, its decision to withdraw LELS' certification was without substantial evidentiary support. Therefore, we reverse and remand for further proceedings.

FACTS

Respondent International Association of Machinists & Aerospace Workers (IAMAW) was the exclusive representative of all supervisory employees in the support division beginning in November of 2007. On September 17, 2020, LELS submitted a petition to BMS seeking appointment as the exclusive representative for the support division.

A mail-ballot election was held. On November 10, 2020, BMS certified LELS "as the exclusive representative for the employees" in the support division.

In March 2022, LELS submitted an unrelated petition for exclusive representation to BMS involving the St. Cloud Fire Department. When BMS began its review for this unrelated petition, it realized that certifying LELS as the exclusive representative for the support division may have been an error.

BMS issued an order on July 12, 2022, determining that it erred in November of 2020 by certifying LELS as the exclusive representative of the support division “due to LELS’s exclusive representative status of several non-supervisory units . . . of the same public employer.” BMS concluded that “[c]ertifying the [support division] to LELS creates an improper affiliation, prohibited under statute and LELS is also prohibited under the statute to act as the exclusive representative for the unit.” BMS’ July 12 order withdrew its previous certification of LELS as exclusive representative of the support division, and reinstated IAMAW as the exclusive representative.

On July 22, 2022, LELS submitted a request for reconsideration. LELS argued that it was improper to issue the order without providing advanced notice or an opportunity to be heard, the *sua sponte* decision was beyond BMS’ authority and jurisdiction, and the record did not support that the affected employees are supervisory within the meaning of Minn. Stat. § 179A.03, subd. 17 (2022). In its order denying reconsideration, BMS acknowledged that it “failed to initially conduct an investigation on the petition for a challenge of exclusive representative status submitted by LELS on September 17, 2020,” but it ultimately denied LELS’ request for reconsideration concluding that there was “no error or fact or law” when it reversed its earlier decision. LELS makes this certiorari appeal.

DECISION

“This court’s task is to review the BMS decision to determine whether it reflects an error of law, whether the determinations are arbitrary and capricious, or whether the findings are unsupported by the evidence.” *In re Clarification of an Appropriate Unit*, 880 N.W.2d 383, 386 (Minn. App. 2016) (quotations omitted). Relators have the burden of proof when challenging an agency decision. *In re Excelsior Energy Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

LELS argues that BMS’ conclusion that the support division is comprised of supervisory employees within the meaning of Minnesota’s Public Employment Labor Relations Act (PELRA) did not have substantial evidentiary support and was arbitrary or capricious.

We “accord substantial deference to the agency’s decision.” *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006) (*CARD*). When reviewing an agency’s action, we must “determine whether the agency has taken a hard look at the problems involved, and whether it has genuinely engaged in reasoned decision-making.” *Id.* (quotation omitted).

“Substantial evidence is defined as (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

PELRA prohibits a union from being certified as an exclusive representative for, and acting on the behalf of, supervisory employees if that union is also the exclusive representative of nonsupervisory employees of the same public employer. Minn. Stat. § 179A.06, subd. 2 (2022). PELRA defines a “supervisory employee” as:

a person who has the authority to undertake a majority of the following supervisory functions in the interests of the employer: hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees’ grievances on behalf of the employer. To be included as a supervisory function which the person has authority to undertake, the exercise of the authority by the person may not be merely routine or clerical in nature but must require the use of independent judgment. . . . The administrative head of a . . . police or fire department, and the administrative head’s assistant, are always considered supervisory employees.

Minn. Stat. § 179A.03, subd. 17. Thus, evidence must show that the supervisory employees perform the statutory functions that qualify them as supervisory employees.

BMS directs our attention to its November 2007 certification of IAMAW and LELS’ petition from September 2020. Both documents, in slightly different language, identify the support division as supervisory employees “who are public employees within the meaning of Minn. Stat. § 179A.03, Subd. 14, excluding confidential and all other employees.” This, BMS argues, is substantial evidence that the employees in the support division are supervisory. We are not persuaded.

Though the petition states that the supervisory employees are “public employees” within the meaning of PELRA, and references the appropriate statutory definition of a public employee, the petition makes no reference to the statutory definition of supervisory

employees. *See* Minn. Stat. § 179A.03, subd. 14 (2022) (defining “public employee”). And, there is no evidence in the record, and the petition and November 2007 certification provides none, indicating that the employees in the support division engage in the “hiring, transfer, suspension, promotion, discharge, assignment, reward, or discipline of other employees, direction of the work of other employees, or adjustment of other employees’ grievances on behalf of the employer,” or use “independent judgment.” Minn. Stat. § 179A.03, subd. 17. Nor is there any evidence indicating that these employees are the “administrative head[s] of . . . police.” *Id.*

Because BMS made its decision with no evidence, it lacked “more than a scintilla of evidence” and is, consequently, unsupported by substantial evidence. *See Cannon*, 783 N.W.2d at 189. Accordingly, we reverse BMS’ decision and remand for further proceedings.¹

Reversed and remanded.

¹ LELS also argues that BMS lacked the statutory authority to decertify it, decertification without a hearing violated its due process rights, and reinstatement of IAMAW as the representative for the employees was arbitrary and capricious. Because we reverse and remand for the reasons stated, we do not reach these arguments.